HON'BLE MR JUSTICE A. GOPAL REDDY

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WRIT PETITION NO.21030 OF 1994

DATE:07.03.2006

Between:

State of A.P. through Forest Range

Officer, Nizamabad. And another.

..... PETITIONERS

AND

G.Linga Reddy and another.

.....RESPONDENTS

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HON'BLE MR JUSTICE A. GOPAL REDDY

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W.P. No.21030 OF 1994

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ORDER:

The Forest Range Officer and the Divisional Forest Officer, Nizamabad invoked the Certiorari jurisdiction of this Court under Article 226 of Constitution of India to call for the records of the second respondent i.e. the Additional District Judge, Nizamabad and to quash the judgment and decree passed on 24.8.1994 in F.A.No.5 of 1991 and declare the same as contrary to law.

It is not in dispute that the lorry bearing No.APJ 5631 belonging to the first respondent was found abandoned on PWD Road between Manchippa village to Mudakpally village on 7.5.1991 and the Forest Range Officer-first petitioner found 86 teak logs measuring 4.235 CMT worth Rs.25,360/- in the said lorry. He seized the said teak logs along with the lorry and produced the same before the authorized officer i.e. the Divisional Forest Officer, Nizamabad on 8.5.1991 and a case was registered in POR No.38 of 1991 on 7.5.1991. Panchanama was conducted with regard to the teak logs in the presence of panchas and on subsequent enquiry it was found that the material seized with the lorry was originated from the vicinity of the forest Manchippa in compartment No.307 from the spot at Tagupoina Gandi. On production of the vehicle before the Forest Officer, a show cause notice was issued to the first respondent under sub-Section (2-A) and (2-B) of Section 44 of the A.P. Forest Act, 1967 as amended by Act, 17 of 1976 on 30.5.1991 stating therein the

seizure of the vehicle, the nature of offence committed, the enquiries made in that regard etc. and the first respondent was called upon to explain as to why the seized material along with the vehicle used in commission of the offence should not be confiscated. Pursuant to the said show cause notice, the first respondent submitted his explanation stating that a few days before the seizure of the lorry, he was away from Nizamabad town on business purpose and entrusted the lorry to a temporary driver, who had previously many a times driven the lorry for transportation of paddy from Dichpally and Dharmaram to Nizamabad on hire charge basis. It was stated that when he returned to Nizamabad on 25.5.1991 he came to know the fact of seizure of lorry by the forest officials on the ground of illegal transportation of teakwood and when he made enquiries about the driver, it was revealed that the driver was absconding. The first respondent came to know that in the evening of 6.5.1991 while the lorry was coming from Dichpally some persons at Dharmaram village stopped it and asked the driver to transport paddy from Manchippa village to Nizamabad; they took the lorry to Manchippa and there they forcibly loaded the teakwood in the lorry in spite of objections raised by the driver and they threatened him with serious consequences and due to fear and panic the driver started the lorry and after covering some distance the lorry broke down and from there, the driver ran away. Further, it was stated that some unknown lambadas of that area had loaded the teakwood in the lorry. Finally, he stated that the entire incident had taken place in his absence and therefore, he had no knowledge of the commission of the offence. The authorized officer having not satisfied with the explanation offered by the first respondent, conducted an enquiry wherein five witnesses were examined on behalf of the forest officials. The fifth witness, who is an independent witness, stated that he was summoned by the Forest Range Officer on 7.5.1991 and the material was unloaded in his presence; the measurements of the 86 teak logs were recorded and he had signed on the panchanama. Except the first respondent, no other person was examined on his behalf to prove his stand that the lorry was used in the offence without his knowledge or connivance or the knowledge or connivance of his driver. Basing on the evidence recorded and as per the observations made during the enquiry, the Divisional Forest Officer, Nizamabad held that the first respondent, being the owner, failed to take adequate measures to prevent the misuse of his lorry and deliberately let the lorry to be used for smuggling the precious forest wealth and accordingly, through his proceedings dated 26.8.1991 ordered for confiscation of the offending vehicle along with the forest produce.

Aggrieved by that, the first respondent preferred an appeal being F.A.No.5 of 1991 before the Additional District Jude, Nizamabad-the second respondent herein. The learned Additional District Judge through the impugned judgment and decree allowed the appeal setting aside the confiscation orders solely believing the contention of the first respondent that the lambadas of Manchippa village had forced the temporary driver with dire consequences to his life and loaded the teak logs after taking the lorry to their village on the pretext of loading the paddy. He further held that the first respondent had no knowledge of the involvement of the vehicle in the forest crime and that there was no serious lapse on his part in controlling the vehicle and accordingly, ordered to restore the vehicle to the first respondent in 'as it is where it is' condition. Aggrieved by that the writ petition has been preferred by the Forest Department.

Heard the learned Government Pleader for Forests and also the counsel for the first respondent. Perused the material on record.

Section 44 (2-C) of the A.P. Forest Act, 1967 makes it obligatory on the part of the owner of the offending vehicle to prove to the satisfaction of the authorized officer that the vehicle was used in carrying the property without his knowledge or connivance or the knowledge or connivance of his agent, if any, or the person in-charge of the vehicle in committing the offence and that each of them had taken all reasonable and necessary precautions against such use. The Apex Court in **State of M.P. v. Suresh Kumar** (AIR 1997 SC 1017) while interpreting the provision of M.P. Van Upaj (Vyapar Viniyaman) (9 of 1969) (as amended by Act of 1986), which is analogous to the provisions of A.P. Forest Act, 1967, categorically held that in the absence of owner producing any other material on record to discharge the burden cast upon him, it cannot be said that the competent authority committed any error in coming to the conclusion that the owner of the vehicle has failed to satisfy the authorized officer that the illegal activity committed by the driver of the vehicle was without his knowledge or connivance. Mere ipse dixit of the owner cannot be said to be sufficient evidence to discharge burden under Section 15(6) of the said Act. Accordingly, the Apex Court set aside the order passed by the High Court restoring the confiscation order.

Having regard to the said law enunciated by the Apex Court, since the first respondent failed to discharge the burden, the authorized officer has not committed

any infirmity in ordering confiscation of the vehicle. Though the first respondent failed to discharge the burden by examining the driver or any other independent witness to prove that the vehicle was used without his knowledge, the learned Additional District Judge merely relying on the ipse dixit statement of the first respondent, allowed the appeal setting aside the confiscation order and thus committed a manifest illegality. Hence, the impugned judgment cannot be sustainable and the same is liable to be set aside.

Accordingly, the Writ Petition is allowed and the impugned judgment and decree made in F.A.No.5 of 1991 is set aside and the confiscation order passed by the authorized officer is restored. No costs.

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A. GOPAL REDDY, J

07th MARCH, 2006.

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